

Title	<i>Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale</i> (revise form MC-095)
Summary	<i>Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale</i> (form MC-095) would be revised to eliminate the possibility that expenses might be improperly recovered twice.
Source	Civil and Small Claims Advisory Committee
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov
Discussion	<p><i>Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale</i> (form MC-095) was adopted in 2001 to implement Civil Code section 2924j(h). However, the method of accounting in item 16 of the form may be confusing and may possibly lead to a double recovery of certain expenses. Because the trustee handles the foreclosure and incurs costs and expenses in connection with it, the sale-related fees, costs, and expenses (those authorized by Civil Code section 2924k) may be deducted twice on the current form—on both lines 16b (foreclosure fees and costs) and 16f (trustee's fees and expenses).</p> <p>To eliminate this problem, line 16b has been eliminated from the form altogether, thereby requiring all foreclosure costs and fees be itemized along with other trustee fees and costs in item 15, the total of which is entered on new line 16e.</p> <p>This revision of form MC-095 should eliminate the possibility of double recovery.</p> <p>The revised form MC-095 is attached.</p>
	Attachments

TELEPHONE NO.: _____ FAX NO. (Optional): _____
E-MAIL ADDRESS (Optional): _____
ATTORNEY FOR (Name): _____

DRAFT 2
3/06/03

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

IN RE (ADDRESS OF REAL PROPERTY):

**PETITION AND DECLARATION REGARDING UNRESOLVED
CLAIMS AND DEPOSIT OF UNDISTRIBUTED
SURPLUS PROCEEDS OF TRUSTEE'S SALE**

Jurisdiction (check all that apply):

☐ ACTION IS A LIMITED CIVIL CASE

Amount deposited ☐ does not exceed \$10,000
☐ exceeds \$10,000, but does not exceed \$25,000

☐ ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)

CASE NUMBER:

1. Petitioner (*name*): _____ is the trustee under the Deed of Trust described in items 2 and 3 below.

2. The Deed of Trust encumbered the real property commonly known as *(describe)*:

(the "property") and legally described ☐ in Attachment 2 ☐ as follows:

3. The Deed of Trust was

a. Executed by *(name)*: _____ as trustor.

b. Executed on *(date)*: _____

c. Recorded:

(1) Date: _____

(2) County: _____

(3) Instrument number: _____

IN RE: 	CASE NUMBER:
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The Trustee's Sale, Surplus Proceeds, and Notice to Potential Claimants

4. The property was the subject of a trustee's sale that was held on *(date)*:
5. A trustee's sale guarantee was prepared for the trustee's sale. *(A copy of the trustee's sale guarantee must be attached as Attachment 5.)*
6. The total sale price of the property was: \$
7. After payment of the amounts required by Civil Code section 2924k(a)(1)–(2), there were surplus proceeds from the trustee's sale available to potential claimants in the total amount of: \$
8. Within 30 days after the trustee's sale, the trustee sent written notice under Civil Code section 2924j(a) to all persons with a recorded interest in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice. The names and addresses of all persons sent notice under Civil Code section 2924j(a) are as follows:

☐ Continued on Attachment 8.

The Claims

9. The trustee has received a total of *(specify number)*: written claims from potential claimants.
10. The trustee has exercised due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from the persons identified in item 8 to whom notice was sent.
11. The trustee submits this declaration under Civil Code section 2924j(c) for the following reason:
 - a. ☐ After due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds. *(If this reason applies, describe the problem of determining priorities in Attachment 11a.)*
 - b. ☐ The trustee has determined that there is a conflict between potential claimants to the surplus proceeds. *(If this reason applies, identify the claimants and describe the conflict in Attachment 11b.)*
12. The trustee provides the following additional information relevant to the identity, location, priority of potential claimants, and the conflict of claims:

☐ Continued on Attachment 12.

Notice of Intent to Deposit Funds and Proof of Service

13. The trustee has provided written notice to all persons with a recorded interest in the property who would be entitled to notice under Civil Code section 2924b(b)–(c). The notice includes the following information:
 - a. The trustee intends to deposit funds from the trustee's sale with the clerk of the court.
 - b. A claim for funds must be filed with the court within 30 days from the date of notice.
 - c. The address of the court in which the funds are to be deposited and a telephone number for obtaining further information.

(Proof of Service of the notice on all persons entitled to notice under Civil Code section 2924j(d) must be attached to this declaration as Attachment 13.)

IN RE:	CASE NUMBER:
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Deposit

14. Distributions

The trustee has distributed the total amount of: \$ _____ to the following claimants based on their written claims:
Name of claimant: _____ Amount: _____

☐ Continued on Attachment 14.

15. Trustee's Fees and Expenses

The trustee has incurred reasonable fees and expenses totaling: \$ _____. These fees and expenses are recoverable under Civil Code section 2924k(a)(1) and (b) and are described ☐ in Attachment 15 ☐ as follows (*specify*):

16. Deposit

The amount to be deposited is calculated as follows:

a. Trustee's sale proceeds	\$
b. Debt to foreclosing creditor	\$
c. Available surplus proceeds (<i>a minus b</i>)	\$
d. Claims paid by trustee (<i>from item 14</i>)	\$
e. Trustee's fees and expenses (<i>from item 15</i>)	\$
f. Remaining surplus proceeds (<i>c minus (d plus e)</i>)	\$
g. Filing fee	\$
h. Deposit (<i>f minus g</i>)	\$

(If the trustee is represented by an attorney, the attorney's signature follows):

Date:

_____	▶	_____
(TYPE OR PRINT NAME OF ATTORNEY)		(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____	▶	_____
(TYPE OR PRINT NAME OF TRUSTEE)		(SIGNATURE OF TRUSTEE)